

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

IN RE: FCA US LLC MONOSTABLE
ELECTRONIC GEARSHIFT
LITIGATION

MDL No. 2744

Case No: 16-md-02744
Honorable David M. Lawson
Magistrate Judge David R. Grand

**FCA US LLC’S EMERGENCY MOTION TO STAY AND SEAL
THE COURT’S MAY 1, 2019, OPINION AND ORDER
DENYING IN PART MOTIONS TO SEAL CERTAIN DOCUMENTS**

FCA US LLC (“FCA US”), by and through its counsel, Dykema Gossett PLLC, moves the Court on an emergency basis to stay and seal its May 1, 2019, Opinion and Order Denying in Part Motions to Seal Certain Documents (ECF No. 392) (“the Opinion and Order”). In support of this Motion, FCA US relies upon the law and argument set forth in its Brief in support, which is filed contemporaneously herewith. FCA US submits as follows:

1. On May 1, 2019, the Court entered an Opinion and Order Denying in Part Motions to Seal Certain Documents (ECF No. 392) (“the Opinion and Order”).
2. The Opinion and Order also ordered that “redacted versions of Exhibits 4, 6, 8, and 11 to the defendant’s response to the motion for class certification” be filed by May 8, 2019. It was further ordered that “[c]opies of

those same exhibits that the parties offer in support of other papers must be filed in appropriately redacted form by that same date.”

3. The Opinion and Order further ordered the filing of redacted and unredacted copies of all other documents subject to the requests to seal by May 8, 2019.

4. The Opinion and Order also quotes extensively from the documents that are at issue and includes information that FCA US believes is confidential.

5. FCA US intends to file a Motion for Reconsideration shortly, and an appeal to the U.S. Court of Appeals for the Sixth Circuit, if necessary. As such, FCA US respectfully asks the Court to (1) stay the May 1, 2019, Opinion and Order until resolution of the forthcoming Motion for Reconsideration and any further appeal to the Sixth Circuit (if necessary), as FCA US will suffer irreparable harm and prejudice confidential documents are filed on the public docket and (2) seal its Opinion and Order until reconsideration and/or appeal is complete as otherwise, FCA US will suffer irreparable harm and prejudice as confidential material is discussed in, and quoted from, that Opinion and Order.

6. In accordance with E.D. Mich. L.R. 7.1(a), on May 6, 2019 counsel for FCA US contacted Plaintiffs’ counsel, William Kalas, via telephone and (i) explained the nature of this Motion and its legal basis, and (ii) requested concurrence in the relief sought; however, concurrence was not received.

Dated: May 6, 2019

Respectfully submitted,

DYKEMA GOSSETT PLLC

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MDL No. 2744

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**BRIEF IN SUPPORT OF FCA US LLC'S
EMERGENCY MOTION TO STAY AND SEAL
THE COURT'S MAY 1, 2019, OPINION AND ORDER
DENYING IN PART MOTIONS TO SEAL CERTAIN DOCUMENTS**

ISSUE PRESENTED

Pursuant to Local Rule 7.1(c)(2), the following issue is presented in this motion:

Whether the Court should stay the May 1, 2019, Opinion and Order and seal its Opinion and Order until resolution of the forthcoming Motion for Reconsideration and appeal to the Sixth Circuit (if necessary) because FCA US will suffer irreparable harm if its confidential documents are disclosed, and if the confidential quotes in the Opinion and Order are not sealed from public view, while reconsideration and/or an appeal are being decided.

FCA US LLC answers: Yes.

Plaintiffs would answer: No.

The Court should answer: Yes.

CONTROLLING AUTHORITY

Clinton v. Jones, 520 U.S. 681, 706, 117 S.Ct. 1636, 137 L.Ed.2d 945 (1997)

Hahn v. Star Bank, 190 F.3d 708, 719 (6th Cir. 1999)

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I. INTRODUCTION

On May 1, 2019, the Court issued an opinion on various motions to seal filed by FCA US. The Opinion and Order ordered that “redacted versions of Exhibits 4, 6, 8, and 11 to the defendant’s response to the motion for class certification” be filed by **May 8, 2019**. It was further ordered that “[c]opies of those same exhibits that the parties offer in support of other papers must be filed in appropriately redacted form by that same date.” The Opinion and Order further ordered the filing of redacted and unredacted copies of all other documents subject to the requests by May 8, 2019. And the Opinion and Order quoted extensively from certain documents at issue, including materials that FCA US has asserted is confidential information.

FCA US intends to file a Motion for Reconsideration and, if required after that, an appeal of right to the U.S. Court of Appeals for the Sixth Circuit. FCA US respectfully asks the Court to stay the May 1, 2019, Opinion and Order and seal that Opinion and Order while FCA US exercises its rights under the Local Rules and Federal Rules of Appellate Procedure. The stay and seal is essential to prevent prejudice and irreparable harm to FCA US. FCA US will suffer harm if its confidential documents are disclosed, either in whole by filing them in the public record, or in part in the form of discussion about and quotations from them in the Opinion and Order, while reconsideration and appeal are pending.

II. LEGAL STANDARD FOR MOTION TO STAY

A district court “has broad discretion to stay proceedings as an incident to its power to control its own docket.” *Clinton v. Jones*, 520 U.S. 681, 706, 117 S.Ct. 1636, 137 L.Ed.2d 945 (1997); *see also Hahn v. Star Bank*, 190 F.3d 708, 719 (6th Cir. 1999). In determining a motion to stay, the Court is to weigh the competing burdens of the parties. *Id.* The party seeking the stay bears the burden of “mak[ing] out a clear case of hardship or inequity in being required to go forward.” *Landis v. North Am. Co.*, 299 U.S. 248, 254, 57 S. Ct. 163, 81 L. Ed. 153 (1936). The moving party must show “that there is pressing need for delay, and that neither the other party nor the public will suffer harm from entry of the [stay].” *Ohio Envtl. Council v. United States Dist. Court, S. Dist., etc.*, 565 F.2d 393, 396 (6th Cir. 1997); *see also Rudd Equip. Co. v. John Deere Constr. & Forestry Co.*, 834 F.3d 589 (6th Cir. 2016) (recognizing that “[o]nce information is published, it cannot be made secret again,” that “confidentiality will be lost for all time,” and that “[t]he status quo could never be restored”).

In *Kondash v. Kia Motors America Inc.*, 15-cv-00506 (S.D. Ohio) (ECF No. 125), the district court denied Kia’s motion to seal certain confidential documents. Kia then filed a motion for reconsideration, which was denied. Upon that denial, Kia appealed the decision to the U.S. Court of Appeals for the Sixth Circuit, arguing that the order was immediately appealable under the collateral order

doctrine as expressed in *Rudd Equip. Co.* Kia then sought a stay of the district court's Sealing Order while on appeal, which the district court granted. The Court should similarly grant a stay to FCA US because "[o]nce information is published, it cannot be made secret again." *Rudd Equip. Co., supra*.

III. ARGUMENT

Plaintiffs and the public will not suffer any harm by a stay of the May 8, 2019, deadlines in the Opinion and Order and a sealing of that Order while the Court considers a Motion for Reconsideration or while the U.S. Court of Appeals for the Sixth Circuit considers an interlocutory appeal of right under the collateral order doctrine. Conversely, FCA US will be irreparably harmed if the Parties are forced to file FCA US's confidential documents on the public docket virtually immediately, by May 8, 2019, and if the Opinion and Order continues to be available to the public during that time. If the documents are filed and/or discussed on the public docket, FCA US will not be able to un-ring the bell, as the saying goes. *In re Copley Press, Inc.*, 518 F.3d 1022, 1025 (9th Cir. 2008) ("Secrecy is a one-way street: Once information is published it cannot be made secret again."). FCA US could also be prejudiced in any subsequent appeal as a mootness argument could be asserted. *See, e.g. Constand v. Crosby*, 833 F.3d 405, 410 (3rd Cir. 2016) ("We and our sister circuit courts have held that appeals seeking to restrain 'further dissemination of publicly disclosed information' are moot.").

The prejudice and irreparable harm that FCA US will suffer is real and immediate. As stated above, conversely, there is no immediate need for these documents to be placed in, or discussed and quoted in, the public docket prior to resolution of the Motion for Reconsideration or any subsequent appeal. These documents have been under seal for months and should remain under seal, as should this Court's discussion and quotation of same, while FCA US exercises its right to a Motion for Reconsideration under the E.D. Mich. Local Rules and, if necessary, its appellate rights under the Federal Rules of Appellate Procedure.

IV. CONCLUSION

For the foregoing reasons, FCA US respectfully asks the Court to stay the May 1, 2019, Opinion and Order, and keep that Opinion and Order itself sealed, until resolution of the Motion for Reconsideration and any subsequent appeal to the U.S. Court of Appeals for the Sixth Circuit to prevent irreparable harm and prejudice to FCA US.

Respectfully submitted,

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Dated: May 6, 2019

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CERTIFICATE OF SERVICE

I hereby certify that on May 6, 2019, I caused a true and correct copy of the foregoing to be filed and served electronically via the ECF system. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system or by e-mail or first class mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing.

Dated: May 6, 2019

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